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U.S. DISTRICT COURT  
N.D. DIST. OF CAL. S.J.

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UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

**C07 05576 EDL**

ALEJANDRO NAVA,

Plaintiff,

vs.

P.W. STEPHENS, INC., and DOES 1-10

Defendant

Case No:

COMPLAINT FOR DAMAGES AND  
DEMAND FOR JURY TRIAL:

- 1) Violation of California Labor Code  
Section 510;
- 2) Violations of the Federal Fair Labor  
Standards Act;
- 3) Violation of California Business and  
Professions Code Section 17200; and
- 4) Violation of California Labor Code  
Section 201;
- 5) Violation of California Labor Code  
Section 226.

**NATURE OF CLAIM**

1. This is an action on behalf of ALEJANDRO NAVA who had been employed on a salary basis by P.W. STEPHENS, INC., during the last two years prior to the filing of this Complaint, seeking damages arising from employer's failure to pay overtime as required by the Fair Labor Standards Act and the California Wage Orders and statutes. Plaintiff seeks compensatory damages for unpaid wages under California Labor Code and Wage Orders, liquidated damages under 29 U.S.C. §216(b), waiting time penalties under California Labor Code § 203, damages for inadequate pay statements under California

Labor Code Section 226, and attorney's fees, costs, pre judgment interest pursuant to California Labor Code § 1194(a) and 29 U.S.C. § 216(b), and restitution under California Unfair Trade Practices Act under California Business and Professions Code § 17203.

### **SUBJECT MATTER JURISDICTION AND VENUE**

2. This Court is a proper venue, since all events giving rise to this lawsuit have occurred in this district.
3. Subject matter jurisdiction of this action of this Court is based upon Fair Labor Standards Act, 29 U.S.C. §§201 et. seq. and the pendant jurisdiction of this Court.

### **PARTIES**

4. At all times relevant herein, Plaintiff ALEJANDRO NAVA is an individual resident of San Jose, California.
5. At all times relevant herein, Defendant P.W. STEPHENS,, INC. is a registered California Corporation doing business in Alameda County.
6. At all times relevant herein, Plaintiff ALEJANDRO STEPHENS worked for Defendant P.W. STEPHENS,, INC. primarily in Alameda County.
7. Individual Defendant CHING SUNG SHIH and DOES 1-10, at all times relevant herein, are, according to information and belief, officers, owners, or employees of P.W. STEPHENS, having control over the Plaintiff's work condition and work situation.

### **GENERAL ALLEGATIONS**

8. At all times relevant herein, Plaintiff was an employee of defendant P.W. STEPHENS, INC, a contractor for primarily asbestos removal in California [hereinafter known as Defendant].
9. Plaintiff was according to information and belief, an employee of Defendant acting in the normal course and scope of employment duties with Defendant as a quality control maintenance person.

1 10. During the course of Plaintiff's employment with Defendant, Plaintiff regularly worked  
2 in excess of 8 hours per day and more than 40 hours per week.

3 11. Plaintiff was paid on an hourly basis.

4 12. Plaintiff did not perform "exempt" duties in Plaintiff's position with Defendant and thus  
5 was not subject to any exemption under the Fair Labor Standards Act, *29 CFR 541.112*,  
6 *541.209 and 541.209*. The Plaintiff was not even marginally responsible for management  
7 or administrative functions, and Plaintiff's primary job did not require Plaintiff to  
8 exercise independent discretion and judgment or regularly require invention or  
9 imagination in a recognized field of artistic endeavor more than fifty percent of Plaintiff's  
10 working time.

11 13. At no time during the Plaintiff's employment did Plaintiff maintain any professional  
12 license with the state or practice any recognized profession, nor did Plaintiff exclusively  
13 manage any division of Defendant where Plaintiff customarily and regularly exercised  
14 discretionary powers or perform services of management. Plaintiff did not directly  
15 supervise any employees nor did Plaintiff participate in the development of general  
16 administrative policies of Defendant

17 **COUNT ONE: VIOLATION OF CA LABOR CODE SECTION §510**

18 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

19 14. Plaintiff re-alleges and incorporates paragraphs 1-13 as if fully stated herein.

20 15. California Labor Code Section 501, applicable at all times relevant herein to Plaintiff's  
21 employment by Defendant, provides that all employees are entitled to payment at the rate  
22 of time and one half for hours in excess of 8 in one day, or 40 hours in one week, and  
23 double time for hours in excess of 12 in one day.

1 16. During the course of employment with Defendant, Plaintiff regularly worked in excess of  
2 8 hours a day and 40 hours per week, however Defendant's knowingly and willingly  
3 failed to pay Plaintiff overtime wages as required by law.

4 17. California Labor Code Section 1194 provides that it is unlawful for employers not to  
5 make the required overtime payments identified in the preceding paragraph and that  
6 employees not paid such payments can recover any monies owed by civil action.

7 18. Defendant therefore owes Plaintiff an approximate amount subject to proof representing  
8 overtime wages not properly paid to Plaintiff.

9 19. Defendant has failed and refused and continue to fail and refuse to pay Plaintiff the  
10 amount owed.

11 20. Defendant's failure to pay Plaintiff the required sum violates the provisions of Labor Code  
12 Sections 510 and 1194 and is therefore unlawful.

13 21. Pursuant to Labor Code Section 1194(a), Plaintiff requests that the court award Plaintiff  
14 reasonable attorney's fees and costs incurred by him in this action.

15 **COUNT TWO: VIOLATION OF THE FAIR LABOR STANDARDS ACT**

16 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

17 22. Plaintiff re-alleges and incorporates paragraphs 1-21 as if fully stated herein.

18 23. At all relevant times herein, Plaintiff's employment was subject to the provisions of the  
19 Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and  
20 Plaintiff was an individual employee covered by virtue of Plaintiff's direct engagement in  
21 interstate commerce.

22 24. The FLSA, 29 U.S.C. § 207 requires all employees to be paid overtime for work  
23 performed in excess of forty hours per week, unless specifically exempted by the law.  
24  
25

1 25. Although Plaintiff was not so exempt during employment with Defendant, Defendant  
2 knowingly caused and permitted Plaintiff to regularly work in excess of forty hours per  
3 week without paying Plaintiff one and one half of Plaintiff's regular rate of pay.

4 26. By not paying overtime wages in compliance with the FLSA, Defendant violated  
5 Plaintiff's rights under the FLSA.

6 27. As a direct and proximate result of Defendant's failure to pay proper wages under the  
7 FLSA, Plaintiff incurred general damages in the form of lost overtime wages.

8 28. Defendant intentionally, with reckless disregard for their responsibilities under the FLSA,  
9 and without good cause, failed to pay Plaintiff proper wages, and thus Defendant are  
10 liable to Plaintiff for liquidated damages in an amount equal to lost overtime wages,  
11 pursuant to 29 U.S.C. § 216(b) of the FLSA.

12 29. Defendant therefore owes Plaintiff an amount subject to proof representing the amount of  
13 overtime not properly paid to Plaintiff.

14 30. Plaintiff was required to retain legal assistance in order to bring this action and, as such,  
15 is entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of the  
16 FLSA.

17 **COUNT THREE: VIOLATION OF CA LABOR CODE SECTION 201**

18 **FAILURE TO PAY WAGES DUE AND "WAITING TIME" PENALTIES**

19 31. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-32 as if fully stated  
20 herein.

21 32. At the time Plaintiff's employment with Defendant was terminated, defendant's owed  
22 Plaintiff certain unpaid overtime wages in amounts previously alleged.

23 33. Failure to pay wages owed at an employee's termination as required by Labor Code §201  
24 subjects the employer the payment of a penalty equaling up to 30 days wages, as  
25 provided for in Labor Code § 203.



1 34. As of this date, Defendant has failed and refused, and continue to fail and refuse, to pay  
2 the amount due, thus making Defendant liable to Plaintiff for penalties equal to thirty  
3 (30) days wages, an amount subject to proof.

4 35. Pursuant to Labor Code Section 218.5, Plaintiff requests that the court award Plaintiff  
5 reasonable attorney's fees and costs incurred in this action.

6 36. Pursuant to Labor Code Section 218.6, Plaintiff requests that the court award interest on  
7 all due and unpaid wages, at the legal rate specified by Civil Code Section 3289(b),  
8 accruing from the date the wages were due and payable.

9 **COUNT FOUR: VIOLATION OF CA BUSINESS AND PROFESSIONS CODE**  
10 **SECTION 17200 UNFAIR BUSINESS PRACTICES**

11 37. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-36 as if fully stated  
12 herein.

13 38. At all times relevant herein, Plaintiff's employment with Defendant was subject to the  
14 California Labor Code and applicable Wage Orders promulgated by the California  
15 Industrial Welfare Commission, which required all employees to be paid overtime for  
16 work performed in excess of forty hours per week or eight hours per day, unless  
17 specifically exempted by law.

18 39. At all times relevant herein, as the employer of Plaintiff, Defendant was subject to the  
19 California Unfair Trade Practices Act (California Business and Professions Code §  
20 §17000 et seq.), but failed to pay the Plaintiff overtime pay as required by applicable  
21 California Labor Code and applicable Wage Orders.

22 40. During the period Plaintiff was employed with Defendant, Defendant failed to pay  
23 Plaintiff legally required overtime pay to which Plaintiff was legally entitled, with  
24 Defendant keeping to themselves the amount which should have been paid to Plaintiff.  
25

1 41. In doing so, Defendant violated California Unfair Trade Practices Act, Business and  
2 Professions Code §17200, et seq. by committing acts prohibited by applicable California  
3 Labor Code provisions, California Wage Orders, and the FLSA, thus giving them a  
4 competitive advantage over other employers and businesses with whom Defendant were  
5 in competition and who were in compliance with the law.

6 42. As a direct and proximate result of Defendant' violations and failure to pay the required  
7 overtime pay, the Plaintiff's rights under the law were violated and the Plaintiff incurred  
8 general damages in the form of unpaid wages in an amount subject to proof.

9 43. Defendant had been aware of the existence and requirements of the Unfair Trade  
10 Practices Act and the requirements of State and Federal wage and hour laws, but  
11 willfully, knowingly, and intentionally failed to pay Plaintiff overtime pay due.

12 44. Plaintiff, having been illegally deprived of the overtime pay to which Plaintiff was legally  
13 entitled, herein seeks restitution of such wages pursuant to the Business and Professions  
14 Code §17203 in an amount subject to proof.

15 **COUNT FIVE: VIOLATION OF CALIFORNIA LABOR CODE SECTION 226**

16 **INADEQUATE PAY STATEMENTS**

17 45. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-44 as if fully stated  
18 herein.

19 46. California Labor Code Section 226 provides that all employers shall provide to  
20 employees accurate and complete wage statements including, but not to limited to, an  
21 accurate and current statement of all rates paid for all regular and overtime hours worked  
22 during the pay-period, a complete and itemized statement of deductions, net wages  
23 earned, the dates fir which payment is being made, any and all applicable piece rates, and  
24 the current address ad name of the employer.  
25

1 47. California Labor Code Section 226 further provides that any employee suffering injury  
2 due to a willful violation of the aforementioned obligations may collect the greater of  
3 either actual damages or \$50 for the first inadequate pay statement and \$100 for each  
4 inadequate statement thereafter.

5 48. During the course of Plaintiff's employment, Defendant consistently failed to provide  
6 Plaintiff with adequate pay statements as required by California Labor Code §226.

7 49. Defendant failed to provide such adequate statements willingly and with full knowledge  
8 of their obligations under Section 226.

9 50. Defendant's failure to provide such adequate statements has caused injury to the Plaintiff.

10 51. Plaintiff is therefore legally entitled to recover an amount subject to proof in actual  
11 damages caused by Defendant's failure to provide proper records.

12 52. Plaintiff has incurred costs and fees in bringing this action and seeks to recover such  
13 costs under California Labor Code §226.

14  
15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff prays for the following relief:

17 53. For compensatory damages per CA Labor Code §1194 for unpaid overtime wages in an  
18 amount subject to proof;

19 54. For liquidated damages per the FLSA equal to unpaid overtime wages in an amount  
20 subject to proof;

21 55. For restitution of unpaid overtime pay pursuant to California Business and Professions  
22 Code §17203 in an amount subject to proof;

23 56. For waiting time penalty damages of thirty days wages to Plaintiff, pursuant to California  
24 Labor Code § 203 in an amount subject to proof;



57. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid salaries pursuant to California Labor Code §1194(a) in an amount subject to proof;

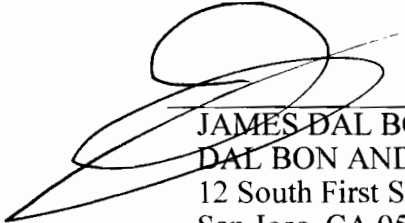
58. For damages for inadequate pay statements in an amount subject to proof pursuant to California Labor Code Section 226;

59. Plaintiff asks the court to award reasonable attorney's fees pursuant to California Labor Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;

60. For costs of suit herein; and

61. For such other and further relief as the Court may deem appropriate.

Thursday, November 1, 2007



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ATTORNEY FOR PLAINTIFF

ALEJANDRO NAVA,

Plaintiff demands a jury trial.